

FCC MAIL SECTION

SEP 14 10 24 AM '98 Federal Communications Commission

DA 98-1727

DISPATCHED BY  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )

Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Grants and Peralta, New Mexico) )MM Docket No. 98-158  
RM-9342**NOTICE OF PROPOSED RULE MAKING****Adopted: September 2, 1998****Released: September 11, 1998**

Comment Date: November 2, 1998

Reply Comment Date: November 11, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Educational Media Foundation ("petitioner"), permittee of noncommercial educational Station KQLV, Channel 288C, Grants, New Mexico, requesting the substitution of Channel 288C1 for Channel 288C at Grants, the reallocation of Channel 288C1 to Peralta, New Mexico, as the community's first local aural service, the modification of Station KQLV's permit to specify Peralta as its community of license and the allotment of Channel 244C3 to Grants as its fourth local FM service. Petitioner states that it will apply for both Channel 288C1 at Peralta and Channel 244C3 at Grants, if allotted.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Modification of License R&O"), FCC Rcd 4870 (1989), recon. granted in part ("Modification of License MO&O"), 5 FCC Rcd 7094 (1990). Petitioner contends that the reallocation of Channel 288C1 to Peralta would result in a preferential arrangement of allotments since it would provide the community with its first local aural service without depriving Grants of its sole such service. In fact, if Channel 244C3 is allotted to Grants as requested, petitioner states that the community will retain the same amount of local service even if Channel 288C1 is reallocated to Peralta. Petitioner states that Station KQLV's construction permit authorizes operation with an effective radiated power of 100 kW from a transmitter site located on land controlled by the U.S. Forest Service. However, the Forest Service has indicated that the site must be redesignated from low to high power usage before the station can operate at its authorized power. This, petitioner relates, would likely take at least two years to accomplish, according to the Forest Service. Therefore, although it is willing to pursue this "time-consuming and

costly" procedure, it believes that the change of community is a more efficient solution. In addition, petitioner states that the change of community will enable Station KQLV to serve 588,179 people within an area of 14,909 square kilometers instead of its present 373,748 people within an area of 18,766 square kilometers, which represents an additional 214,431 persons within its 60 dBu contour.

3. According to petitioner, Peralta is listed in the 1990 U.S. Census as a census designated place with a population of 3,182 people. Further, it states that Peralta has its own post office, zip code, fire department, elementary school and church. In addition, it states that the community is home to numerous retail businesses, including Peralta Power Equipment and Peralta Signs, a fitness center, child day care center, cabinet manufacturer, tire company, pharmacy, automobile repair shop, beauty salon, used car dealer and antiques stores.

4. We recognize that neither Grants nor Peralta are located within an Urbanized Area. However, if a station seeks to change its community of license to one which is outside an urbanized area but whose signal would place a city-grade, 70 dBu, signal over 50% or more of an Urbanized Area, the proponent is required to provide the same showing as currently required for those parties seeking to move to a community within an Urbanized Area. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). In this case, if Channel 288C1 is allotted to Peralta, Station KQLV will provide 86% of the Albuquerque, New Mexico, Urbanized Area with a 70 dBu signal. Therefore, petitioner is requested to provide a showing that Peralta warrants a first local service preference. See, Modification of License MO&O, supra, at 7097.<sup>1</sup> Further, since petitioner proposes to move the transmitter site of Station KQLV, we request that it provide a study showing the area and population which would lose service if the station is relocated to Peralta and the reception services available within both the loss and gain areas.

#### Technical Summary

5. Channel 288C1 can be allotted to Peralta in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.3 kilometers (7.6 miles) west to accommodate petitioner's desired transmitter site. Channel 244C3 can be allotted to Grants without the imposition of a site restriction.<sup>2</sup>

6. We believe petitioner's proposal warrants consideration since the allotment of Channel 288C1 could provide Peralta with its first local aural service while not depriving Grants of its

---

<sup>1</sup> See, also, Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D.C. Cir. 1951); RKO General (KFRC), 5 FCC Rcd 3222 (1990); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988), and Elizabeth City, North Carolina and Chesapeake, Virginia, 7 FCC Rcd 6815 (1992) (request for supplemental information to show that Chesapeake, VA, is deserving of a local service preference).

<sup>2</sup> The coordinates for Channel 288C1 at Peralta are 34-47-55 North Latitude; 106-48-59 West Longitude. The coordinates for Channel 244C3 at Grants are 35-09-06; 107-51-36.

sole local aural service and Channel 244C3 could provide Grants with an additional local aural service. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 288C1 at Peralta or require the petitioner to demonstrate the availability of an additional equivalent channel for their use.

7. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

| <u>City</u>         | <u>Channel No.</u>                                    |                         |
|---------------------|---|-------------------------|
|                     | <u>Present</u>  | <u>Proposed</u>         |
| Grants, New Mexico  | 224C2, <sup>3</sup> 264C2, <sup>4</sup> 279C,<br>288C | 224A, 244C3, 264A, 279C |
| Peralta, New Mexico | --  | 288C1                   |

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before November 2, 1998, and reply comments on or before November 11, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Robert C. Fisher  
Veronica D. McLaughlin  
Fisher Wayland Cooper Leader & Zaragoza L.L.P.  
2001 Pennsylvania Avenue, NW  
Suite 400  
Washington, DC 20006-1851  
(Counsel to petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory

---

<sup>3</sup> Station KAIU's authorization was downgraded from Channel 224C2 to Channel 224A pursuant to application BMPH-960207IC granted on June 13, 1996. The license for Channel 224A was granted on October 3, 1997. The FM Table of Allotments will be amended to reflect this channel change.

<sup>4</sup> Station KQEO's authorization was downgraded from Channel 264C2 to Channel 264A pursuant to the application BMPH-960226IB. The license for Channel 264A was granted on March 13, 1997. The FM Table of Allotments will be amended to reflect this channel change.

Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.